WILLIAM MINGGU NYEGANG & ANOR

v.

PP

HIGH COURT SABAH & SARAWAK, SIBU
CLEMENT SKINNER J
[CRIMINAL APPEAL NO: 42-13-2001]
30 APRIL 2002

CRIMINAL LAW: *Anti Corruption Act 1997 - Section 10(a)(bb) - Corruptly soliciting gratification - Ingredients - Auxiliary police officer - Whether agent of Government of Malaysia - Whether officer of a public body - Anti-Corruption Act 1997, ss. 2, 10(a)(bb)*

WORDS & PHRASES: *'Officer of a public body' - Definition of - Anti-Corruption Act 1997, s. 2*

The appellants had appealed against their conviction and sentence in respect of a charge under s. 10(a)(bb), Anti Corruption Act 1997 ('the Act'), for corruptly soliciting gratification while being an agent of the Government of Malaysia. The appeal, principally, was grounded upon the appellants' contention that the prosecution was duty bound to prove, but had not proved that they were 'agents' or 'officers of a public body' as those terms were defined in s. 2 of the Act. According to the appellants, the prosecution had not adduced any evidence to show that, as auxiliary police officers, they were being paid from public funds, and that being so, they could not be said to be 'agents' of the Government of Malaysia nor 'officers of a public body'. The primary issue that arose was whether, upon a proper interpretation of s. 2 of the Act, and the relevant terms, the appellants' argument herein could be sustained in law.

Held:

[1] The appellants were not correct in their interpretation of 'officer of a public body'. The words 'and any person receiving any remuneration from public funds' appearing in the definition of 'officer of a public body' in s. 2 of the Act ought to be given a disjunctive reading. The reason being, if it was intended that a person is to be regarded as an officer of a public body and receives remuneration from public funds, then there would be no need for the words 'and any person' in the definition. The use of the words 'and any person' showed that they were meant to refer to persons not already referred to in the earlier part of the definition. (p 1014 f-g)

[2] If the definition of an officer of a public body were to be interpreted in the way the appellants suggested, then the words 'and any person' were mere tautology or surplusage. It is a rule of statutory interpretation that a court cannot treat words of a statute as mere tautology or surplusage. Clearly, therefore, these words were not meaningless. They served to show that, even if a person is not a member, an officer, an employee or a servant of a public body, if he receives any remuneration from public funds, he is an officer of a public body within the meaning assigned to that term in s. 2 of the Act. (p 1015 b)

[3] It is wrong of the appellants to have read the decision of the Federal Court in *PP v. Datuk Tan Cheng Swee & Ors* as establishing that two ingredients needed to be proved before a person could be said to be a 'public officer', *viz*: (i) that the officer is engaged in discharging a duty in which the public are interested; and (ii) that the said officer is paid from public funds. (p 1016 d & g)

[3a] Admittedly, the court in *Datuk Tan Cheng Swee*'s case was concerned with the definition of a 'public officer' under the Prevention of Corruption Act 1961. However, it is of fundamental importance to realize that the whole point behind the Federal Court's deliberation was not for the purpose of enabling it to define a 'public officer' as a person who both discharges a duty in which the public are interested and is paid from public funds, but to demonstrate that the definition of a 'public officer' was not confined to persons in the permanent or temporary employment of a public body, as other category of persons could also come within the definition. The effect of the case was to spread the net wider, so to speak, as regards who, in the eyes of the law, are considered officers of a public body. It did not introduce additional ingredient for the proof of 'officer of a public body' as suggested by the appellants. *Datuk Tan Cheng Swee*'s case, hence, could not support the appellants' contention. (p 1018 b-e)

[Appeal dismissed; conviction and sentence affirmed.]

Case(s) referred to:

Dato' Mohamed Hashim Shamsuddin v. Attorney-General, Hong Kong [1986] 2 MLJ 112 ***(refd)***

Foo Loke Ying & Anor v. Television Broadcasts Ltd & Ors [1985] 1 CLJ 511; [1985] CLJ (Rep) 122 SC ***(refd)***

Henley v. The Mayor and Burgesses of Lyme [1830] 103 ER 995 ***(refd)***

PP v. Datuk Tan Cheng Swee & Ors [1979] 1 MLJ 166 ***(dist)***

The King v. Whitaker [1914] 3 KB 1283 ***(refd)***

Legislation referred to:
Anti Corruption Act 1997, ss. 2, 10(a)(bb)

For the 1st & 2nd appellants - Michael Tiang; M/s Wong Orlando Chua & Co
For the respondent - Khairul Azreem Mamat DPP

Reported by WA Shariff

JUDGMENT

Clement Skinner J:

This is the hearing of an appeal against the decision of the learned Sessions Court Judge, Sibu who on 7 August 2001 convicted the first and second appellants of an offence under s. 10(a)(bb) of the Anti Corruption Act 1997 (hereafter "the Act') and punished each of them to six (6) months' imprisonment and to a fine of RM10,000 and in default of payment thereof to four months' imprisonment.

The charge preferred against the appellants read:

> That you, jointly, on the 10th day of July 2000, at about 8.30 a.m., at the Delta Road, Sibu, in the District of Sibu, in the Sibu Division, in the State of Sarawak, being an agent of the Government of Malaysia, to wit, Auxiliary Police Lance Corporal, attached to the Police Station Sungai Merah, Sibu, did corruptly solicit for yourself a gratification, to wit, cash RM50.00 from one LISMAN BIN AMAT, as an inducement for doing an act, in relation to your principal's affair, to wit, to refrain from taking action against the said LISMAN BIN AMAT for alleged traffic offences pertaining to motor vehicle registration number QSE 370, and that you have thereby committed an offence under section 10(a)(bb) of the Anti Corruption Act 1997 (Act 575) and punishable under section 16 of the same act.

Although the appellants' petition of appeal disclosed eleven (11) grounds, at the hearing counsel for the appellants informed the court that the appellants were abandoning all their grounds except for their complaint that the prosecution had failed to prove beyond a reasonable doubt that they were agents of the Government of Malaysia. This complaint takes in grounds (a), (f) and (g) of their petition of appeal.

After hearing the submissions and arguments made on behalf of the appellants as well as the respondent on the matter, I dismissed the appellants' appeal and confirmed the conviction and sentence imposed on them by the learned Sessions Court Judge. I had given brief reasons for doing so. As the appellants are dissatisfied with my decision and wish to take this matter further, I now state my grounds in full.

The facts as appearing from the judgment of the learned Sessions Court Judge show that on 10 July 2000 the complainant Lisman bin Amat (PW1) was sending his younger brother to school on a motor-cycle when he was stopped by two policemen (whom he identified as the first and second appellants) along Jalan Delta, Sibu and questioned by the first appellant about his younger brother not wearing a crash helmet. On being questioned further it was discovered that the complainant was a learner driver but had failed to display an "L" plate and was driving a motor-cycle for which the road tax had expired. As a result of these violations the first appellant informed the complainant "Ini sudah kes berat" and that if a summons were to be issued, it would cost the complainant more than RM1,000. The first appellant then said to the complainant, "Macam ini sajalah, kamu kasih saya kopi O pergi minum sudah cukup". Negotiations then followed about the amount payable with the complainant offering RM10 and then increasing the offer to RM20 when the first appellant, after consulting the second appellant, said "RM20 tidak cukup untuk dua orang, RM50 baru cukup". As the complainant did not have RM50 on him he took the appellants to meet his father at a factory at Sungai Antu to obtain payment, but they were unsuccessful in doing so as the complainant's father was busy. The complainant then took the appellants to meet his mother instead, who, on being informed of the appellants' request to be paid RM50, said she had no money as it was the middle of the month. To this the first appellant said, "Kamu sudah buang masa kami dua" and moved to his motor-cycle to get his summons book. On seeing this the complainant's mother offered to pay the RM50 at the end of the month which the first appellant refused, insisting instead on being paid by 2pm that same day, if possible. The complainant then arranged to meet the first appellant at the appointed time at Wong's Coffee Shop along Jalan Delta, after which the first and second appellants left.

The complainant then proceeded to the offices of the Anti Corruption Agency (hereafter the 'ACA') where he lodged a report on the matter and after discussions with officers of the agency, a plan was set to trap and arrest the appellants. The plan included a lady officer of the ACA who would act as the sister of the complainant and accompany him to Wong's Coffee Shop to effect payment to the appellants.

When the complainant and his "sister" arrived at Wong's Coffee Shop at 2pm on 10 July 2000 as arranged, they found the appellants there already. The complainant's "sister" introduced herself to the appellants after which a discussion ensued about what had transpired earlier. When the complainant asked the first appellant whether he wanted the money, the first appellant replied he would accept the money at another time and place, not at the coffee shop. On the complainant indicating he did not want to make the payment elsewhere

and that the first appellant should accept the money there and then, the second appellant said to the first appellant "Anang, anang" which in Iban means "Don't, don't". The first and second appellants then left Wong's Coffee Shop.

At the trial the prosecution called 7 witnesses to prove its case against the appellants who testified on their own behalf. At the conclusion of the trial, the learned Sessions Court Judge convicted the appellants as she was satisfied that on the evidence before her the charge against them had been proved beyond a reasonable doubt. In so far as the evidence relating to the remaining ground of appeal is concerned, the prosecution relied upon the evidence of Sgt. Major Ismail bin Amer (PW4) who was the officer-in-charge of the Sungai Merah Police Station, Sibu. He identified both the first and second appellants in court and testified that they were police personnel attached to the Sungai Merah Police Station, Sibu and that between 10 July 2000 through to 16 July 2000, they were on duty from 7am to 3pm, Sgt. Major Ismail also produced in evidence, the Daily Duty Roster (P9) for the period 10 July 2000 to 16 July 2000 which showed that the appellants were on duty on 10 July 2000 between 7am and 3pm.

In her grounds of decision, the learned Sessions Court Judge said:

> In order to sustain the charge against both accused, the prosecution must prove the following ingredients beyond any reasonable doubt:
>
> (1) That the 1st and 2nd accused are agents of the Government of Malaysia;
>
> (2) that on the date and time specified in the charge 1st and 2nd accuseds solicited for themselves RM50.00 and upon proof of these two ingredients, the existence of the third ingredient, *viz*,
>
> (3) that the gratification was solicited as an inducement for doing an act, in relation to their principal's affairs, to wit, to refrain from taking action against the said Lisman bin Amat for alleged traffic offences pertaining to motor vehicle registration number QSE 370 is to be presumed unless the contrary is proved.

With reference to the first ingredient of the charge, the learned Sessions Court Judge was satisfied that it had been proved beyond reasonable doubt that the appellants were agents of the Government of Malaysia. This is what she said in her judgment on the matter (at p. 152 of the Record of Appeal):

> As regards the 1st ingredient that 1st and 2nd accused are agents of Government of Malaysia, there is the testimony of PW4 Sgt. Major Ismail bin Amer who testified that he was in-charge of Sg. Merah Police Station on 10/7/2000 and that Lans Kopral William Minggu ak. Nyegang (1st accused)

and Michael Isop ak. Siba (2nd accused) were police personnel attached to Sg. Merah Police Station and that based on Duty Roster (P9) they were on duty from 7 a.m. to 3 p.m. for period from 10/7/2000 to 16/7/2000. The fact that they were police personnel attached to Sg. Merah Police Station, Sibu was indeed not disputed by the defence. Therefore the PP has proved beyond reasonable doubt that both 1st and 2nd accused were agents of the Government of Malaysia on the date and time specified in the charge.

The appellants complain that in coming to her finding, the learned Sessions Court Judge had erred in law as she had failed to direct her mind adequately or at all to the question of whether they were "agents" of the Government of Malaysia. It is their contention that as they were charged with an offence under s. 10(a)(bb) of the Act, that section imposes on the prosecution a duty to prove that they were officers of a public body, which the prosecution had failed to do as no evidence had been adduced to prove that they were paid from public funds.

To appreciate fully the arguments made by the appellants, it will be necessary to set out here the relevant provisions of the Act.

Section 2 of the Act is an interpretation section and states that:

"agent" means any person employed by or acting for another, and includes an officer of a public body or an officer serving in or under any public body, a trustee, an administrator or executor of the estate of a deceased person, a sub-contractor, and any person employed by or acting for such trustee, administrator or executor, or sub-contractor;

"officer of a public body" means any person who is a member, an officer, an employee or a servant of a public body, and includes a member of the administration, a member of Parliament, a member of a State Legislative Assembly, a judge of the High Court, Court of Appeal or Federal Court, and any person receiving any remuneration from public funds, and, where the public body is a corporation sole, includes the person who is incorporated as such;

"public body" includes:

(a) the Government of Malaysia;

(b) the Government of a State;

(c) any local authority and any other statutory authority;

(d) any department, service or undertaking of the Government of Malaysia, the Government of a State, or a local authority;

(e) any company over which any public body as is referred to in paragraph (a), (b), (c) or (d) has controlling power; or

(f) any society, union, organisation or body as the Minister may prescribe from time to time by order published in the Gazette.

The appellants do not dispute that the Police Force is a public body within the meaning assigned to that term in the Act and that a member or officer of the Police Force is an agent within the meaning assigned to that term in the Act. However, it is their case that a person is not an officer of a public body unless the prosecution proves that he is both, a member or officer of a public body and is paid from public funds. Accordingly, the appellants say this appeal turns on the proper interpretation of the definition of the term "officer of a public body", in s. 2 of the Act. It is their contention that because the word "and" appears after the words "Federal Court" in the definition, there are two limbs to the definition; namely, the first part which defines who an officer of a public body is, and the second part which identifies the source of that officer's remuneration. It is their contention that unless both limbs are proved, a person is not an officer of a public body.

The appellants are prepared to concede that the evidence led through Sgt. Major Ismail b. Amer (PW4) was sufficient to establish the first limb of the definition but they say that there was no evidence at all before the court to prove the second limb of the definition, namely, that they were paid from public funds and, therefore, the prosecution had failed to prove that they were officers of a public body.

If the appellants are correct in their interpretation of the definition of an "officer of a public body", then it stands to reason that they should succeed in their appeal as there was no evidence led before the court below that they received any remuneration from public funds.

I did not, however, find that the appellants were correct in their interpretation of the definition of an officer of a public body. In my judgment the words "and any person receiving any remuneration from public funds" is to be given a disjunctive reading in the definition because if it was intended that a person is to be regarded as an officer of a public body only if it is shown that he is both, a member or officer of a public body and receives remuneration from public funds, then there would be no need for the words "and any person" to appear in the definition. Their use indicates that they are meant to refer to persons not already referred to in the earlier part of the definition.

It is a rule of statutory interpretation that a court is not at liberty to treat words of a statute as mere tautology or surplusage unless they are wholly meaningless. As Abdoolcader SCJ (as he then was) said in *Foo Loke Ying & Anor. v. Television Broadcasts Ltd. & Ors.* [1985] 1 CLJ 511; [1985] CLJ (Rep) 122:

> The court ... is not at liberty to treat words of a statute as mere tautology or surplusage unless they are wholly meaningless. On the presumption that Parliament does nothing in vain, the Court must endeavour to give significance to every word in an enactment, and it is presumed that if a word or phrase appears in a statute, it was put there for a purpose and must not be disregarded.

If the definition of an officer of a public body is to be interpreted in the way the appellants wish to, then the words "and any person" are treated as mere tautology or surplusage which cannot be the case as they are not meaningless – they serve to show that even if a person is not a member, an officer, an employee or a servant of a public body, if he receives any remuneration from public funds he is an officer of a public body within the meaning assigned to that term in s. 2 of the Act.

A second reason for giving the words a disjunctive reading is because, after the words "Federal Court" a comma appears and is followed by the conjunction "and" which in my view indicates that a disjunctive reading must be given to the words following thereafter. As authority for the preposition that a punctuation forms part of any statutory enactment and may be used as a guide to interpretation, I refer to the decision of Abdoolcader SCJ in *Dato' Mohamed Hashim Shamsuddin v. Attorney-General, Hong Kong* [1986] 2 MLJ 112, where his Lordship had this to say on the matter (at p. 122):

> The day is long past when the courts would pay no heed to punctuation in any written law (*Hanlon v. Law Society* [1981] AC 124, 197-198 per Lord Lawry), and the presence or absence of a comma may be highly significant (*Re Steel (deceased) Public Trustee v. Christian Aid Society* [1979] Ch. 218; *Marshall v. Cottingham* [1981] 3 All ER 8, 21).

I am fortified in my view that the appellants' interpretation of the definition of an officer of a public body cannot be sustained because that interpretation would practically negate the provisions of paras. (e) and (f) of the definition of a "public body", which cannot have been the intention. Those two paragraphs state respectively that any company over which the Government has controlling power, and any society, union, organisation or body as the Minister may prescribe by order published in the Gazette, fall within the definition of a public body. However, it is pertinent to note that no mention is made in those two paragraphs that the companies and entities mentioned therein must receive public funds before they are regarded as a public body. If that be the case, it is not difficult to see that very few, if any, of the companies and entities mentioned in paras. (e) and (f) will be financed from public funds. Therefore, can it be said that an employee or member or officer or servant of such a company or entity may, with impunity, engage in corrupt practice safe in the knowledge

that there can be no successful prosecution against him since it cannot be shown that he is paid from public funds? In similar vein, one might ask the question: And what about a person who serves voluntarily in a company or in a society or organisation mentioned in para. (e) and (f); is he too free to engage in corrupt practice since it can never be shown that he is paid from public funds? The answer must surely be "No", because the definition of an officer of a public body does not admit of the interpretation put on it by the appellants.

In support of their contention regarding the interpretation of the definition of an officer of a public body, the appellants relied on the following passage in the judgment of the Federal Court in *Public Prosecutor v. Datuk Tan Cheng Swee & Ors.* [1979] 1 MLJ 166:

> We accept that a public officer in the context of the relevant ordinance is an officer who discharges any duty in the discharge of which the public are interested more so if he is paid from public funds.

Learned counsel for the appellants interpreted the Federal Court as saying in that passage that in order for the prosecution to establish that a person was a "public officer" (within the meaning assigned to that term in the Prevention of Corruption Act 1961), two ingredients must be proved, namely, (i) the officer is engaged in discharging a duty in which the public are interested and (ii) the said officer is paid from public funds.

Having read the judgment of the Federal Court in that way, counsel for the appellants submitted that when the present Act was passed in 1997, "the decision in *Datuk Tan Cheng Swee*'s case was incorporated into the Act" with the effect that in the present case, to successfully prove that the appellants were agents of the Government of Malaysia or officers of a public body, the prosecution is "required by the Act to prove to the court that both appellants were officers of the Police Force and they were receiving remuneration from public funds for being such officers".

While I am prepared to accept that the definition of an "officer of a public body" in s. 2 of the 1997 Act does address some of the issues raised and decided on in *Datuk Tan Cheng Swee*'s case, I cannot agree with the way counsel for the appellants has read the above quoted passage of the judgment in *Datuk Tan Cheng Swee*'s case. I say so for the following reasons.

In *Datuk Tan Cheng Swee*'s case, the court was concerned with the definition of a "public officer" under the Prevention of Corruption Act 1961. There was evidence before the court that by an Order, identified as Malacca Municipal Council (Transfer of Function) Order 1967, published as Malacca P.U. 31 of 1967 on 16 November 1967 (hereafter M.P.U. 31 of 1967), all the functions

of the Malacca Municipal Council including that of the President, Deputy President and councillors or any or all of them had become transferred to Datuk Tan who was to be styled as the Commissioner. The charges (3) preferred against Datuk Tan alleged that he had committed corrupt practice in that, being a public officer, to wit, Commissioner of Malacca Municipality, he had approved three plans for a proposed housing scheme, for his pecuniary advantage (as he was the Chairman and share-holder of the company that had submitted the plans). Datuk Tan was acquitted of all three charges without his defence being called because, amongst other things, the learned trial judge took the view that the prosecution had to prove that Datuk Tan was a public officer within the meaning assigned to that term in s. 2 of the Prevention of Corruption Act 1961 which section defined a "public officer" to include "any person in the permanent or temporary employment of a public body". However, the learned trial judge found that Datuk Tan did not come within that definition as it could not be said that he was in the permanent or temporary employment of the Malacca Municipal Council because by M.P.U. 31 of 1967, all the duties and functions of the Malacca Municipal Council including the President, Deputy President and Councillors or any or all of them had been transferred to Datuk Tan who was styled as Commissioner. In short, the learned trial judge found that Datuk Tan was himself the council and not its employee, and the fact that he was paid an allowance of RM500 made no difference to his position as he was not an employee of the Municipal Council.

On appeal, the Federal Court held that the learned trial judge was wrong in the view he took because (a) on a strict and proper interpretation of M.P.U. 31 of 1967, it did not constitute Datuk Tan the Municipal Council but merely transferred to him, as a public officer, the power to exercise the functions of the Municipal Council and the members collectively and individually thereof. His styling as the sole commissioner for Malacca did not have the effect of making Datuk Tan a public body or a corporation sole; (b) because of the use of the word "includes" as opposed to the narrower term "means" in the definition of a "public officer", the definition was not restricted only to a person in the permanent or temporary employment of a public body. And to demonstrate the point made that persons other than those in the permanent or temporary employment of a public body could come within the definition of a public officer, the Federal Court referred to the judgments in two cases: namely, (i) *Henley v. The Mayor and Burgesses of Lyme* [1830] 103 ER 995 in which Best CJ held that "everyone who is appointed to discharge a public duty and receives a compensation in whatever form, whether from the Crown or otherwise, is a public officer; and (ii) *The King v. Whitaker* [1914] 3 KB 1283 in which Lawrence J held that "A public officer is an officer who discharges

any duty in the discharge of which the public are interested, more clearly so if he is paid out of a fund provided by the public. If taxes go to supply his payment and the public have an interest in the duties he discharged, he is a public officer".

So it was really to accept and thereafter apply the *ratio* in those two cases to the facts of *Datuk Tan*'s case that the Federal Court said what it did in the passage relied upon by the appellants. But, it is of fundamental importance to realise that the whole point behind the Federal Court's exercise of referring to the decision in those two cases was not for the purpose of enabling it to define a public officer as a person who both, discharges a duty in which the public are interested and is paid from public funds; but to demonstrate that the definition of a public officer was not confined only to persons in the permanent or temporary employment of a public body as other category of persons could come within that definition, such as, for example, an officer who discharges any duty in the discharge of which the public are interested, and more so if he is paid from public funds.

Thus, while it might be said that what was said by the Federal Court in *Datuk Tan Cheng Swee*'s case about the definition of a public officer was incorporated into the definition of an officer of a public body in the 1997 Act, the effect, however, of the words "and any person receiving any remuneration from public funds" was to spread the net wider, so to speak, when determining who, in the eyes of the law, are considered officers of a public body and did not introduce, as was suggested by the appellants, an additional ingredient which has to be proved against a person before it can be said that he is an officer of a public body. With respect, it will be seen from what I have said that that passage in the judgment of *Datuk Tan Cheng Swee*'s case does not support the contention of the appellants.

It was for all the above reasons that I dismissed the appellants' appeal.